



CV 02-00937 #00000009

District Judge Robert S. Lasnik  
Magistrate Judge Monica J. Benton  
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CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LOEUN LUN,  
INS # A 25 283 626,

Petitioner,

No. C02-937L(MJB)

v.

I.N.S. RETURN AND STATUS REPORT  
AND MOTION TO DISMISS

JOHN ASHCROFT, Attorney General of the  
United States; ROBERT S. COLEMAN, JR., INS  
District Director; and the UNITED STATES  
IMMIGRATION AND NATURALIZATION  
SERVICE,

(Note on Motion Calendar for  
Consideration on October 18, 2002)

Respondents.

The Respondents (hereafter "I.N.S." or the "government") respectfully file the following memorandum as their Return to the Petition for Writ of Habeas Corpus, as a Status Report on this case, and as the government's cross-Motion to Dismiss or Stay this case. This memorandum is supported by the certified, paginated copy of the Petitioner's I.N.S. record of proceedings ("A-file"), filed herewith. In the following statement of facts, "L" and "R" citations will refer to documents found on the left side or right side of Petitioner's A-file.

1. Immigration History

The Petitioner, Loeun Lun (a.k.a. Loeun Lou Lun) (R054), date of birth July 3, 1975 (L021; R064), INS # A25 283 626, is a native and citizen of Cambodia. (L004; R064). Mr. Lun entered the United States at Honolulu, Hawaii on October 13, 1981 as a refugee. (L004). On or about February 18,

ORIGINAL

1 1997,<sup>1</sup> Mr. Lun's immigration status was adjusted to that of Lawful Permanent Resident retroactive to  
 2 October 13, 1981. (L004; L021).

3 On August 24, 1999, Mr. Lun was interviewed by the INS in conjunction with his Naturalization  
 4 application. During this interview, the fact that Mr. Lun had a criminal record first came to the attention  
 5 of the INS. (R079; L021). As a result, on July 30, 2000, Mr. Lun's case was referred to INS  
 6 Investigations to determine if he was subject to removal from the United States based on his criminal  
 7 record. (R079).

8 On March 12, 2002, Mr. Lun was served with an INS arrest warrant and taken into INS custody.  
 9 (L001-002; R079). The INS issued a Notice to Appear, placing Lun in removal proceedings and alleging  
 10 deportability under INA § 237(a)(2)(A)(iii) [8 U.S.C. § 1227 (a)(2)(A)(iii)] in that he had been convicted  
 11 of an aggravated felony, a crime of violence for which the term of imprisonment ordered was at least one  
 12 year.<sup>2</sup> (L004; R066). Mr. Lun was ordered detained without bond, but on March 28, 2002, Seattle  
 13 Immigration Judge Kendall Warren set bond at \$6,000.00.<sup>3</sup> (L026; R079).

14 On April 8, 2002, removal proceedings were conducted before Seattle Immigration Judge Anna  
 15 Ho. Judge Ho ordered Mr. Lun removed to Cambodia. (L033; R067). Mr. Lun waived any appeal to  
 16 the Board of Immigration Appeals. (L033). Accordingly, Lun's removal order became administratively  
 17 final on April 8, 2002. See INA § 101(a)(47)(B)(ii). [8 U.S.C. § 1101(a)(47)(B)(ii)].

## 18 2. Criminal History

19 On February 8, 1995, Mr. Lun was convicted in Pierce County Superior Court, Cause No. 94-1-  
 20 03482-2, of Assault 2nd Degree (sentenced to 12 months in prison) and Assault 3rd Degree (sentenced  
 21 to 8 months in jail). (L004; L006-009; R059). The incident involved the use and discharge of a weapon  
 22 by Mr. Lun. (R057). The sentences were to run concurrently and, upon his release, Mr. Lun was to

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23 <sup>1</sup> Other documents in Petitioner's A-file cite the date he was accorded status as LPR as February 18,  
 24 1987. (R075; R079).

25 <sup>2</sup> Pierce County Superior Court Cause No. 94-1-03482-2. Mr Lun was convicted of Assault 2nd  
 26 Degree and Assault 3rd Degree on February 8, 1995.

27 <sup>3</sup> The INS filed a notice of appeal regarding the redetermination of bond in this matter; however, on  
 28 April 8, 2002, Lun was ordered removed to Cambodia and waived his appeal of the removal order. INS,  
 therefore, moved to dismiss its appeal as moot. (L054).

1 serve 12 months in community supervision. (L012; Judgment and Sentence at L017).

2 Mr. Lun's criminal history also reflects that he has been found guilty and/or found to have  
3 committed numerous traffic violations (approximately 22) from 1991 to 1998. These traffic violations  
4 included several No Valid Operator's License and Driving While License Suspended offenses. (R001-  
5 054; R079).

### 6 3. Final Order: Removal Period

7 Mr. Lun's removal order became a "final order", as defined in INA § 101(a)(47)(B) [8 U.S.C. §  
8 1101(a)(47)(B)] on April 8, 2002, upon his waiver of an appeal to the BIA. The 90-day "removal  
9 period" established in INA § 241(a)(1) [8 U.S.C. § 1231(a)(1)] thus ended on July 8, 2002. The six-  
10 month period of post-final-order detention established by the Supreme Court in Zadvydas v. Davis, 533  
11 U.S. 678, 121 S. Ct. 2491 (2001), accordingly ends on October 8, 2002. See Ma v. Ashcroft, 257 F.3d  
12 1095, 1102 n.5 (9th Cir. 2001).

### 13 4. Removal Efforts

14 On April 10, 2002, the INS made a request for travel documents to the Embassy of Cambodia.  
15 (R069-071). The United States and the Cambodian governments have signed an agreement for the  
16 repatriation of Cambodian citizens to Cambodia, and we anticipate Mr. Lun's removal can be effected in  
17 the reasonably foreseeable future.

### 18 5. Custody Review

19 On July 3, 2002, Mr. Lun was notified that his custody status would be reviewed on or about July  
20 15, 2002. (R073). Mr. Lun provided several letters from family members and friends, as well as his  
21 own letter, in support of his release. (L041; L051; L058-078). Mr. Lun's custody review was conducted  
22 on July 16, 2002. (R080). On July 23, 2002, the INS District Director issued a decision to continue Mr  
23 Lun's detention. (R082). The District Director based his decision upon a review of Petitioner's file and  
24 consideration of information supplied in support of Lun's release. In making his decision, the District  
25 Director concluded that Lun's repatriation to Cambodia is likely to occur in the reasonably foreseeable  
26 future; however, if a travel document has not been obtained by October 6, 2002, Mr. Lun's case will be  
27 transferred to the INS Headquarters Post Order Detention Unit for further review.

1       6. Lawfulness of Detention

2       Mr. Lun's continued detention beyond the 90-day removal period is appropriate, in accord with 8  
3 C.F.R. § 241.4(g)(2), which states:

4               In making a custody determination, the District Director and the Director of the  
5 HQPDU shall consider the ability to obtain a travel document for the alien. If it is  
6 established at any stage of a custody review that, in the judgment of the Service, travel  
documents can be obtained, or such document is forthcoming, the alien will not be  
released unless immediate removal is not practicable or in the public interest.

7       Further, 8 C.F.R. § 241.4(a)(3) provides for continued detention of "An alien ordered removed  
8 who is removable under sections 237(a)(2) or 237(a)(4) of the Act . . . ." Mr. Lun has been convicted of  
9 an aggravated felony, as addressed in INA § 237(a)(2)(A)(iii) [8 U.S.C. § 1227(a)(2)(A)(iii)].

10       Likewise, 8 C.F.R. § 241.4(g)(2) also provides for continued detention beyond the removal  
11 period of an alien ordered removed if a travel document can be obtained; to wit:

12               The Service's determination that receipt of a travel document is likely may by  
13 itself warrant continuation of detention pending the removal of the alien from the United  
States.

14       Mr. Lun fails to meet his burden of proof that it is unlikely that the INS will not be able to effect  
15 his removal in the reasonably foreseeable future. The Governments of the United States and Cambodia  
16 have signed an agreement that allows repatriation of Cambodian nationals to Cambodia, see Exhibit A  
17 attached, and we fully expect Mr. Lun can be repatriated. Furthermore, the six-month period of  
18 presumptively lawful post-order detention established by the Supreme Court in Zadvydas, supra,  
19 continues to run and will not expire until October 8, 2002. If a travel document has not been obtained by  
20 that date, the HQPDU will conduct a further custody review.

21       7. Conclusion & Motion to Dismiss or Stay

22       Mr. Lun's continued detention by the INS is lawful because the six months has not yet expired  
23 and will not expire until on or about October 8, 2002. The Cambodian government is now issuing travel  
24 documents and, if one has not been obtained by that date, Mr. Lun's file will be forwarded to HQPDU  
25 for further custody review. Mr. Lun has been convicted of an aggravated felony and is deportable under  
26 INA § 237(a)(2)(A)(iii) [8 U.S.C. 1227(a)(2)(A)(iii)] Respondents respectfully request that, based upon  
27 the foregoing, Petitioner's habeas corpus petition be denied and dismissed or, in the alternative, that this  
28

1 Court stay this action until after the six-month period has expired to enable th INS to conduct its custody  
2 review at that time. We so move.

3 Respectfully submitted this 23rd day of September, 2002

4 JOHN McKAY  
5 United States Attorney  
6 Western District of Washington

7 *Christopher L. Pickrell*  
8 CHRISTOPHER L. PICKRELL  
9 Assistant United States Attorney  
10 601 Union Street, Suite 5100  
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14 WSBA # 12787  
15 ATTORNEY FOR RESPONDENTS

16 CERTIFICATE OF SERVICE

17 I CERTIFY that on this date I caused to be mailed a copy of the foregoing document to the  
18 attorney for Petitioner:

19 Jay W. Stansell  
20 Assistant Federal Public Defender  
21 1111 Third Avenue, Suite 1100  
22 Seattle, WA 98101-3207  
23 Tel 206-553-1100, x211  
24 Fax 206-553-0120  
25 Email jay\_stansell@fd.org

26 DATED this 23rd day of September, 2002.

27 *Sheila Sowecke*  
28 Sheila Sowecke  
Legal Assistant  
Office of the United States Attorney  
Seattle, Washington

**MEMORANDUM BETWEEN THE GOVERNMENT OF THE UNITED STATES  
AND THE ROYAL GOVERNMENT OF CAMBODIA FOR THE  
ESTABLISHMENT AND OPERATION OF  
A UNITED STATES-CAMBODIA JOINT COMMISSION  
ON REPATRIATION**

The Government of the United States of America (United States) and the Royal Government of Cambodia (Cambodia):

Recognizing their mutual international obligations to accept the return of their nationals in an orderly, prompt, and humane manner;

Desiring to establish and advance the development of normal immigration relations, in accordance with general recognized principles of international law and practice;

Desiring to put into effect the principles adopted by both States in the Joint Statement made in Phnom Penh on April 27, 2000, and subsequently endorsed by order of the Royal Government of Cambodia on June 21, 2000; and

Desiring to further enhance cooperative and friendly relations between the two States on the basis of respect for each State's sovereignty, and on the basis of equality and mutual interest;

Hereby establish the following Principles and Objectives which are intended to govern the establishment and operation of a Joint Commission on Repatriation:

**Fundamental Principles**

1. Each repatriation request should be considered and decided individually, on a case-by-case basis, without preconditions.
2. The United States and Cambodia should act in a spirit of mutual cooperation in determining the nationality of an individual and in all other matters pertaining to repatriation.
3. The United States and Cambodia are committed to the primary objective of effecting the return of each other's nationals to their home State, taking into account the humanitarian and compassionate aspects of each case and the principles of internationally recognized human rights.
4. Nothing in this document imposes, or should be construed to impose, any legal or financial obligations on either State.

EXHIBIT

A

*[Handwritten signature]*

### **Composition of the Joint Commission and Scheduling of Meetings**

1. The Joint Commission on Repatriation (Commission) should be comprised of four (4) members from the United States and four (4) from Cambodia, representing the ministries of immigration, foreign affairs, and justice, or their equivalent, of such State.
2. The Commission should meet twice each year, or as mutually agreed, at times and locations to be mutually determined.

### **Procedures/Modalities for Considering Repatriation Requests**

1. Each State should designate a Central Authority for the receipt and initial screening of repatriation requests and related matters.
2. The Commission should be the primary forum for the discussion and resolution of repatriation policy and individual repatriation requests refused by the Central Authority of the requested State.
3. Unless otherwise agreed, all repatriation requests shall be initially sent to the Central Authority of the requested State and should include:
  - a. a copy of the final order of removal issued by the competent authority of the requesting State;
  - b. a copy of the individual's passport, if available, or other documentation evidencing the identity and biographical history of the individual and his or her status as a national of the receiving State;
  - c. a copy, if any, of any available record of the individual's criminal violations in the requesting State;
  - d. two identical photographs of the individual and his or her fingerprints and medical history, if available;
  - e. any additional information that the Central Authority of the requested State deems necessary.
4. Upon receiving and reviewing a repatriation request, the Central Authority of the requested State may request the assistance and resources of the Central Authority of the requesting State in conducting any additional interview of the individual and verifying any information contained in the request.
5. The Central Authority of the requested State should respond in writing to the Central Authority of the requesting State not later than 30 days from the date of receipt of the request, unless otherwise agreed. In all cases of refusal, the Central Authority of the



requested State should state its reasons in writing and should refer the request to the Commission for consideration. The Commission shall consider all referred requests at its next scheduled meeting.

6. When the Central Authority of the requested State accepts a repatriation request, it should simultaneously issue a travel document, valid for at least 60 days, to permit the individual's return. The requesting State should expeditiously make the appropriate arrangements for the return of the individual to the requested State, and should inform the Central Authority of the requested State at least seven (7) business days in advance of the return itinerary and any special considerations, such as medical, law enforcement, or escort matters.
7. Unless otherwise agreed, all costs of repatriation, including air transportation and escort services, should be borne exclusively by the requesting State.

Signed at Phnom Penh on March 22, 2002, in duplicate, in both the English and Khmer languages with identical value.

FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA

FOR THE ROYAL GOVERNMENT  
OF CAMBODIA



Kent M. Wiedemann  
Ambassador of the  
United States of America



Lt. Gen. Era Sam An  
Secretary of State  
Ministry of Interior